

Guidance notes



Provisional statements

Updated December 2014

Where premises are being or are about to be constructed or altered, the necessary investment may not be committed unless investors have some assurance not only that the project has appropriate planning permission, but that they have some degree of assurance that a premises licence covering the desired licensable activities would be granted for the premises when the building work is completed.

Applicants may apply therefore for a provisional statement, which acts as an indicator whether a premises licence is likely to be granted upon completion of the construction work or alterations in accordance with the plans.

Premises licence

A premises licence is a licence that is granted to authorise the premises to be used for licensable activities, namely:

- the retail sale of alcohol
- the provision of regulated entertainment
- the provision of late night refreshment

Licensing objectives and aims

The legislation (the Licensing Act 2003) provides a clear focus on four statutory objectives, which must be addressed when licensing functions are undertaken.

These are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

Each objective is of equal importance. It is important to note that there are no other

licensing objectives, so that these four objectives are paramount considerations at all times.

Regulated entertainment

This is defined under the Licensing Act 2003 as:

- a performance of a play
- an exhibition of a film
- an indoor sporting event
- a boxing or wrestling entertainment (indoor and outdoor)
- a performance of live music
- any playing of recorded music
- a performance of dance
- entertainment of a similar description to that falling within the performance of live music, the playing of recorded music and the performance of dance

but only where the entertainment takes place in the presence of an audience and is provided at least partly to entertain that audience.

Late night refreshment

The provision of late night refreshment means the supply of hot food or hot drink to the public, for consumption on or off the premises, between 11:00 pm and 5:00 am or the supply of hot food or hot drink to any persons between those hours on or from premises to which the public has access.

Who can apply for a provisional statement?

Any person (if an individual aged 18 or over) who has an interest in the premises may apply for a provisional statement.

A person in this context, includes a business, a firm of architects, a construction company or a financier.

Application process

An application for a provisional statement must be made to the licensing authority for the area in which the premises is situated.

The application must be accompanied by:

- the required fee
- a schedule of works

- plan of the premises
- confirmation that the application has been simultaneously served to the appropriate responsible authorities

Schedule of works

The schedule of works is a document, which must include the following information:

- a statement made by or on behalf of the applicant including particulars of the premises to which the application relates and of the licensable activities for which the premises are to be used
- plans of the work being or about to be done at the premises

Plan of the premises

A premises plan must be of the standard scale - 1mm = 100mm (unless previously agreed by the council in another format). The council's preference is also that plans should not be larger than A3 in size.

The premises plan shall include the following:

- the location of the extent of the boundary of the building, if relevant, and any external and internal walls which comprise the premises, or in which the premises is comprised
- the location of points of access to and egress from the premises
- if different from the above, the location of escape routes from the premises
- in cases where the premises is to be used for more than one licensable activity, the area within the premises used for each activity
- fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment
- in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
- in the case where the premises includes any room or rooms containing public conveniences, the location of any of these
- the location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment
- the location of a kitchen, if any, on the premises

The plan may include a legend where indication of the above is by the use of symbols.

Responsible authorities

These are public bodies that must be fully notified of applications and that are entitled to make representations to the licensing authority in respect of the application. All representations made by responsible authorities are relevant representations if they concern the effect of the application on the licensing objectives.

The responsible authorities are:

- The licensing authority
- the Chief Officer of Police
- the Devon and Somerset Fire and Rescue Service
- North Devon Council Health and Safety Team
- the Health and Safety Executive
- North Devon Council Environmental Protection Team
- North Devon Council planning service
- Exmoor National Park if the premises falls within their boundaries
- Devon County Council Children and Young Persons Services
- Devon County Council Weights and Measures
- The Primary Care Trust

When serving the application on the licensing authority, the applicant should simultaneously serve copies of the application and the plan on all relevant responsible authorities. The application is not valid until this has been completed.

Consultation and advertising

The responsible authorities have 28 consecutive days to consider the application served upon them. Any other persons (for example, members of the public) also have a 28-day period within which to consider making a relevant representation - see 'Representations' below.

To advertise the application, the applicant must clearly display a notice of a size equal or larger than A4 (on pale blue paper) printed legibly in black ink or typed in black in a font size equal to or larger than size 16. This should be immediately on or outside the premises for a period of no less than twenty eight consecutive days starting on the day following the day on which the application was given to the North Devon Council and during which time other persons may make representations.

For properties with a frontage onto a highway more than 50 metres long, the Notice should be displayed at 50 metre intervals.

The licensing authority will send a notice to be used as above by return (one working day) following receipt of a valid application.

Additionally, the applicant must publish a notice in a local paper such as the North Devon Gazette and Advertiser or North Devon Journal. This should be on at least one occasion during the period of 10 working days starting on the day following the day on which the application was given to North Devon Council.

Content of notice (for premises display and advertisement in local paper)

The notice should clearly contain a brief summary of the application setting out details as follows:

- proposed relevant licensable activities to be carried on or from the premises
- the name of the applicant
- the postal address of the premises premises, if any, or if there is no postal address for the premises a description of those premises sufficient to enable the location and extent of the premises to be identified
- the postal address and, where applicable, the world-wide web address where the North Devon Council register is kept and where the record of the application may be inspected (see footer of this guidance document)
- the dates between which an interested party and responsible authorities may make representations to North Devon Council (see advertising applications above)
- a statement that representations shall be made in writing
- a statement that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence - £5,000.

Representations

A hearing on an application will only occur where non-frivolous or vexatious objections or representations from responsible authorities (as described above) or other persons are received:

However, these representations must be considered by the licensing authority to have an impact on the promotion of one or more of the licensing objectives (see above).

It is important to note that representations can be negative (objection) or positive (in support) of the application and must be made in writing or by email.

Where no objections or relevant representations are made by responsible authorities or other persons, the licensing authority must grant the provisional statement on the 29th

consecutive day subject only to the *mandatory conditions and the schedule of works.

In the unlikely event, that you have not heard anything regarding your application after the 28-day period above, please contact us. The outcome of your application is not deemed granted if you have not heard from us for reasons of public health and safety.

If relevant representations are received, the licensing authority must hold a hearing and consider the representations, unless successful mediation has occurred.

See also premises licence application section below.

Mandatory conditions

As applicable to the granted licensable activities, the conditions below are mandatory and will be shown on the licence in addition to those volunteered in the operating schedule/imposed at a hearing:

Alcohol:

There shall be no sale or supply of alcohol when there is no Designated Premises Supervisor (DPS) in respect of the premises licence or at a time when the said Premises Supervisor does not hold a personal licence or when his/her licence is suspended.

Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Exhibition of films:

Admission of children (under the age of 18) to any exhibition of films must be restricted in accordance with the film classification body designated as the authority under Section 4 of the Video Recordings Act 1984.

Where the film classification is not specified or the relevant licensing authority has notified the premises licence holder under Section 20 (3)(b) of the Licensing Act 2003, the admission of children must be restricted in accordance with any recommendation made by the Licensing Authority.

Door supervision:

Any person used to carry out a security activity as required under the operating schedule conditions must be licensed by the Security Industry Authority.

Mediation

Mediation is successful where all parties, for example, the applicant, all parties making relevant representations and with the agreement of the licensing authority; agree that the reasons for representation have been overcome and that these may be reflected in the licence issued, such as the operating schedule/licence conditions.

Hearing (mediation unsuccessful)

Details of the date and time of the hearing together with details of the procedures to be followed will be sent to the applicant, responsible authorities and other persons at least 10 working days before the day of the hearing.

The applicant and parties described above must give notice to North Devon Council at least two working days before the start of the hearing stating:

- whether they will attend the hearing in person
- whether they will be represented by someone else (for example, lawyer / councillor / MP)
- whether they think a hearing is unnecessary (if, for example an agreement has been reached before a formal hearing)
- any request for another person to attend the hearing, including how they may be able to assist the licensing authority in relation to the application

Hearing - what action is available to the licensing sub-committee?

When a hearing is held, the committee must decide whether, if the premises were constructed or altered in the way proposed in the schedule of works and if a premises licence were sought for these premises, it would consider it necessary for the promotion of the licensable objectives to:

- attach conditions to the licence
- rule out any of the licensable activities applied for
- refuse to specify the person nominated as premises supervisor, or
- reject the application

Appeal

Right of appeal exists to the Magistrates' Court for both applicant and chief officer of police and must be lodged with the Court within 21 consecutive days of the date of the objection notice.

The longest possible expected timescale for the determination of the grant of a

provisional statement, where a hearing proceeds, is 91 consecutive days (excluding the appeals process).

Determination

Where an application is either granted or rejected, the licensing authority will give a notice to that effect to the applicant, relevant responsible authorities and other persons having made a successful representation and the chief officer of police for the area in which the premises is situated.

Where there is a hearing, the committee must give clear and comprehensive reasons for its eventual determination of the application.

Holding and deferring electronic applications (s182 guidance)

If an application has been given at the weekend, the notice advertising the application (where applicable) may already be displayed outside the premises by the time that the licensing authority downloads the application. The Government therefore recommends that if a licensing authority holds an application, it should inform the applicant that the original (or if necessary, amended) notice must be displayed until the end of the revised period. Therefore, the applicant should not advertise the application in a local newspaper until they have received confirmation from the licensing authority that the application includes all the required information. This advice ensures applicants do not incur any unnecessary costs.

Premises licence application

Following the grant of a provisional statement, the applicant (s) will usually at some point following the completion of works etc., need to make a premises licence application in readiness to commence trading.

It should be noted that if the premises licence application reflects the details of the granted provisional statement without significant changes, that unless relevant representations by responsible authorities and other persons were made at the time of the application for provisional statement, that they can not be considered again.

This would only be possible if the premises licence application is considered significantly different in aspiration by the licensing authority and then new grounds for possible representation may exist.

Register

Current applications for the grant of a provisional statement and those previously completed can be viewed on the Premises Licence Public Register, listed together with other 'events' held against a given premises.

Complaints

If you feel we have failed to provide you with good service or are concerned about the progress of your application, please telephone the Customer Service Centre. The Licensing team will endeavour to resolve any concerns you may have.